

103D CONGRESS
1ST SESSION

H. R. 1611

To amend the Communications Act of 1934 to require the Federal Communications Commission to continue and improve efforts to promote diversity in media ownership, management, and programming, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1993

Mrs. COLLINS of Illinois introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to require the Federal Communications Commission to continue and improve efforts to promote diversity in media ownership, management, and programming, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Diversity in Media Act of 1993”.

6 (b) REFERENCES.—References in this Act to “the
7 Act” are references to the Communications Act of 1934
8 (47 U.S.C. 151 et seq.).

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) the Communications Act of 1934 was en-
4 acted to ensure that the allocation of the various
5 broadcast media would promote the expression of di-
6 verse opinions and the rapid and vigorous exchange
7 of information;

8 (2) the Federal Communications Commission
9 has formulated policies to promote diversity in the
10 ownership and management of broadcast media;

11 (3) the United States Supreme Court has af-
12 firmed the constitutionality of the Federal Commu-
13 nications Commission’s policies to promote diversity;
14 and

15 (4) it is therefore necessary to codify and to ex-
16 tend the policies and procedures that promote diver-
17 sity in the ownership, management, and program-
18 ming of the broadcast media.

19 **SEC. 3. FINDINGS AND PURPOSES REGARDING DISCRIMI-**
20 **NATION.**

21 The Act is amended by inserting after section 2
22 thereof the following new section:

23 “FINDINGS AND PURPOSES REGARDING DISCRIMINATION

24 “SEC. 2A. (a) The Congress hereby finds that—

25 “(1) minority and female Americans have been
26 and continue to be unjustly deprived of full partici-

1 pation in the common carrier, private radio, and
2 broadcasting communications services regulated
3 under this Act;

4 “(2) an efficient American telecommunications
5 industry is of grave importance to the interstate and
6 foreign commerce of the Nation;

7 “(3) minority and female Americans have not
8 fully participated as employees or owners of tele-
9 communications facilities and this lack of participa-
10 tion greatly decreases the efficiency of the American
11 telecommunications industry;

12 “(4) participation by minority and female
13 Americans as owners or employees of telecommuni-
14 cations facilities materially contributes to the diver-
15 sity of information available to the public through
16 these facilities;

17 “(5) such participation promotes the public in-
18 terest not only in expression of diverse opinions, but
19 in promoting the sense of self-esteem and integrity
20 that is essential to reducing racial tensions and so-
21 cial conflicts and motivating individuals to seek and
22 take productive places in society; and

23 “(6) reliance on indirect structural regulation of
24 diversity of ownership and control is an important
25 and reasonable method to carry out the fundamental

1 objectives of the First Amendment in promoting free
2 and open expression of diverse opinions.

3 “(b) It is a purpose of this Act to provide for greater
4 diversity of ownership and control of telecommunications
5 in the domestic and international marketplace by requir-
6 ing persons subject to regulation under this Act to develop
7 and implement equal opportunity programs as part of
8 their employment practices.”.

9 **SEC. 4. DEFINITIONS.**

10 Section 3 of the Act (47 U.S.C. 153) is amended by
11 adding at the end thereof the following new paragraphs:

12 “(hh) ‘Minority’ means American Indians and Alaska
13 Natives; Asians and Pacific Islanders; Blacks, not of His-
14 panic origin; and Hispanics.

15 “(ii) An entity is ‘owned or controlled’ by members
16 of a minority or by women if—

17 “(1) in the case of a sole proprietorship, the
18 sole proprietor is a member of a minority or is a
19 woman;

20 “(2) in the case of a partnership, a majority of
21 the equity interest held by general partners is held
22 by members of a minority or women, and the general
23 partners hold at least 20 percent of the equity inter-
24 est in the partnership;

1 “(3) in the case of a corporation with only one
2 class of voting securities, a majority of the voting se-
3 curities are held by members of a minority or
4 women; and

5 “(4) in the case of a corporation with more
6 than one class of voting securities, members of a mi-
7 nority or women hold securities controlling a major-
8 ity of the votes and representing at least 20 percent
9 of the equity interest in the corporation.”.

10 **SEC. 5. ANNUAL REPORT ON OWNERSHIP AND CONTROL BY**
11 **MINORITIES AND WOMEN.**

12 Section 303 of the Act (47 U.S.C. 303) is amended
13 by adding at the end thereof the following:

14 “(v) Require, by regulation, that each holder of a li-
15 cense or permit for any media of mass communications
16 submit to the Commission an annual report describing, in
17 such detail as that regulation may require, the proportion
18 of the ownership and control of such holder that is held
19 by minorities and women.”.

20 **SEC. 6. PREFERENCES AND ENHANCEMENTS IN COMPARA-**
21 **TIVE SELECTIONS.**

22 Section 309(e) of the Act is amended—

23 (1) by inserting “(1)” after “(e)”; and

24 (2) by adding at the end thereof the following
25 new paragraphs:

1 “(2) When the Commission has so designated for a
2 comparative hearing two or more mutually exclusive appli-
3 cations, the Commission—

4 “(A) determines if an applicant is entitled to
5 prevail based on the extent to which selection of the
6 applicant will increase diversification of ownership;

7 “(B) determines, if an applicant is not so enti-
8 tled to prevail, if an applicant is entitled to prevail
9 based on the extent to which the ownership and
10 management of the applicant are functionally inte-
11 grated; and

12 “(C) determines, if an applicant is not so enti-
13 tled to prevail, the applicant that, based on the fac-
14 tors reviewed under subparagraphs (A) and (B), will
15 best promote the public interest, convenience, and
16 necessity.

17 “(3) In evaluating which applicants will increase di-
18 versification under paragraph (2)(A), the Commission
19 shall—

20 “(A) award a demerit based on the extent of
21 ownership in other media of mass communication;
22 and

23 “(B) award an enhancement credit based on the
24 extent to which the applicant is owned or controlled
25 by minorities or women.

1 “(4) In evaluating applicants’ integration of owner-
 2 ship and management under paragraph (2)(B), the Com-
 3 mission shall award enhancement credits for the following
 4 characteristics (listed in descending order of the mag-
 5 nitude of the credit which may be awarded):

6 “(A) the extent to which the applicant is owned
 7 or controlled by minorities or women;

8 “(B) the extent of the applicant’s past local res-
 9 idence and participation in local civic affairs; and

10 “(C) the extent to which the applicant has pre-
 11 vious broadcast or other business experience trans-
 12 ferable to broadcasting.”.

13 **SEC. 7. PREFERENCES AND ENHANCEMENTS IN CONNEC-**
 14 **TION WITH RANDOM SELECTIONS.**

15 (a) DEFINITION OF MEDIA OF MASS COMMUNICA-
 16 TION.—Section 309(i)(3)(C)(i) of the Act is amended—

17 (1) by inserting after “direct broadcast satellite
 18 service,” the following: “instructional television fixed
 19 service, operational fixed and fixed satellite services
 20 (if used for mass media purposes),”; and

21 (2) by inserting before the period at the end
 22 thereof the following: “, without regard to whether
 23 such services are distributed for a fee or whether the
 24 reception system is individually addressed”.

1 (b) DEFINITION OF SYSTEM OF RANDOM SELEC-
2 TION.—Section 309(i)(3)(C) is further amended by adding
3 at the end thereof the following new paragraph:

4 “(iii) The term ‘system of random selection’ includes
5 any selection system that uses chance, in whole or in part,
6 to select one applicant from a group or pool of qualified
7 applicants, without regard to whether that selection sys-
8 tem is used alone or in conjunction with any other mecha-
9 nism (such as a point system, comparative hearing, or
10 other method) as a tie-breaker.”.

11 (c) RESTRICTIONS ON SELECTION CRITERIA USED IN
12 CONJUNCTION WITH RANDOM SELECTIONS.—Section
13 309(i)(4) of the Act is amended by adding at the end
14 thereof the following:

15 “(C) If the Commission establishes any point system,
16 comparative criteria, or other selection criteria for use in
17 conjunction with a system of random selection to select
18 among mutually exclusive applicants for licenses for media
19 of mass communication, each such point system, compara-
20 tive criteria, or other selection system shall provide for the
21 granting of a significant preference or enhancement to any
22 applicant that is owned or controlled by members of a mi-
23 nority group or by women.”.

1 **SEC. 8. TAX CERTIFICATES AND DISTRESS SALES.**

2 Title I of the Act is amended by adding at the end
3 thereof the following new section:

4 **“SEC. 9. TAX CERTIFICATES AND DISTRESS SALES.**

5 “(a) **ISSUANCE OF CERTIFICATE.**—When determin-
6 ing whether to approve an application for consent by the
7 Commission to an assignment of a license or construction
8 permit or to a transfer of control of a corporate licensee
9 or permittee for a broadcast, common carrier, private
10 radio, or other telecommunications facility to an assignee
11 or transferee that is owned or controlled by members of
12 a minority or by women, the Commission, after determin-
13 ing the qualifications of the applicant under section
14 308(b), shall issue a tax certificate under section 1071 of
15 the Internal Revenue Code of 1954 (relating to gain from
16 sale or exchange to effectuate policies of Federal Commu-
17 nications Commission) if the Commission finds such ac-
18 tion to be consistent with section 2A.

19 “(b) **FINDINGS REQUIRED.**—When considering a li-
20 cense which has been designated for a revocation hearing,
21 or a license renewal application which has been designated
22 for hearing, the Commission shall permit the licensee to
23 assign or transfer its license to an applicant that is owned
24 or controlled by members of a minority or by women, if—

25 “(1) the applicant is qualified under section
26 308(b);

1 “(2) the maximum percentage of the fair mar-
2 ket value, as of the date of the filing of the applica-
3 tion for transfer or assignment, or as of the date of
4 designation, whichever is lower, of the facility to be
5 paid by the assignee or transferee for the facility
6 does not exceed—

7 “(A) 75 percent, if the assignment or
8 transfer is proposed after designation for hear-
9 ing but before the hearing begins;

10 “(B) 50 percent, if the assignment or
11 transfer is proposed after the first prehearing
12 conference but before the order of the adminis-
13 trative law judge involved; or

14 “(C) 25 percent, if the assignment or
15 transfer is proposed after such order but before
16 a final ruling of the Commission denying the li-
17 cense renewal or revoking the license; and

18 “(3) there has been no final ruling of the Com-
19 mission denying the license renewal or revoking the
20 license.”.

21 **SEC. 9. EQUAL EMPLOYMENT OPPORTUNITY.**

22 Title I of the Act is further amended by adding after
23 section 8 the following new section:

1 **“SEC. 10. EQUAL EMPLOYMENT OPPORTUNITY.**

2 “(a) APPLICATION OF SECTION.—This section shall
3 apply to the following:

4 “(1) licensees or permittees of commercially op-
5 erated amplitude modulation, frequency modulation,
6 television, or international broadcast stations, and li-
7 censees or permittees of public broadcast stations;

8 “(2) commercially operated amplitude modula-
9 tion, frequency modulation, television, or inter-
10 national broadcast networks, and public broadcast
11 station networks;

12 “(3) common carriers;

13 “(4) satellite operators, licensees, and permit-
14 tees, whether licensed as a broadcaster, common car-
15 rier, or private or other service; and

16 “(5) headquarters operations of any of the enti-
17 ties listed in paragraph (1) through paragraph (4).

18 “(b) EQUAL OPPORTUNITY REQUIRED.—Equal op-
19 portunity in employment shall be afforded by each entity
20 specified in subsection (a) to all qualified persons, and no
21 person shall be discriminated against in employment be-
22 cause of race, color, religion, national origin, age, or sex.

23 “(c) PROGRAM REQUIRED.—Any entity specified in
24 subsection (a) which has 5 or more employees shall estab-
25 lish, maintain, and execute a positive continuing program
26 of specific practices designed to ensure equal opportunity

1 in every aspect of its employment policy and practice.

2 Under the terms of its programs, it shall—

3 “(1) define the responsibility of each level of
4 management to ensure a positive application and
5 vigorous enforcement of its policy of equal oppor-
6 tunity, and establish a procedure to review and con-
7 trol managerial and supervisory performance;

8 “(2) inform its employees and recognized em-
9 ployee organizations of the equal employment oppor-
10 tunity policy and program and enlist their coopera-
11 tion;

12 “(3) communicate its equal employment oppor-
13 tunity policy and program and its employment needs
14 to sources of qualified applicants without regard to
15 race, color, religion, national origin, age, or sex, and
16 solicit their recruitment assistance on a continuing
17 basis;

18 “(4) conduct a continuing program to exclude
19 every form of prejudice or discrimination based on
20 race, color, religion, national origin, age, or sex,
21 from its personnel policies and practices and work-
22 ing conditions; and

23 “(5) conduct a continuing review of job struc-
24 ture and employment practices and adopt positive
25 recruitment, training, job design, and other meas-

1 ures needed to ensure genuine equality of oppor-
2 tunity to participate fully in all its organizational
3 units, occupations, and levels of responsibility.

4 “(d) REGULATIONS REQUIRED.—

5 “(1) Not later than 180 days after the date of
6 enactment of this section, and after notice and op-
7 portunity for hearing, the Commission shall pre-
8 scribe rules to carry out this section.

9 “(2) Such rules shall specify the terms under
10 which an entity specified in subsection (a) shall, to
11 the extent possible—

12 “(A) disseminate its equal opportunity pro-
13 gram to job applicants, employees, and those
14 with whom it regularly does business;

15 “(B) use minority organizations, organiza-
16 tions for women, media, educational institu-
17 tions, and other potential sources of minority
18 and female applicants, to supply referrals when-
19 ever jobs are available in its operation;

20 “(C) train minority and female employees,
21 interns, or both, or provide assistance to minor-
22 ity educational institutions and educational in-
23 stitutions for women so that they can provide
24 such training, except that such requirement is
25 not mandatory for entities specified in sub-

1 section (a) with fewer than fifteen full-time
2 employees;

3 “(D) evaluate its employment profile and
4 job turnover against the availability of minori-
5 ties and women in its labor recruitment area;

6 “(E) undertake to offer promotions of mi-
7 norities and women to positions of greater re-
8 sponsibility;

9 “(F) encourage minority and female entre-
10 preneurs to conduct business with all parts of
11 its operation; and

12 “(G) analyze the results of its efforts to re-
13 cruit, hire, promote, and use the services of mi-
14 norities and women and explain any difficulties
15 encountered in implementing its equal employ-
16 ment opportunity program.

17 “(3) Such rules also shall require an entity
18 specified in subsection (a) to file an annual statis-
19 tical report identifying by race and sex the number
20 of employees in each of the following full-time and
21 part-time job categories: (A) Corporate Manager;
22 (B) General Manager; (C) Chief technician; (D)
23 Comptroller; (E) General Sales Manager; (F) Pro-
24 duction Manager; (G) Managers; (H) Professionals;
25 (I) Technicians; (J) Sales; (K) Office and Clerical;

1 (L) Skilled Craftsperson; (M) Semiskilled Operators;
2 (N) Unskilled Laborers; (O) Service Workers.”.

3 **SEC. 11. REPORT TO CONGRESS.**

4 Section 4(k) of the Communications Act of 1934 (47
5 U.S.C. 154(k)) is amended by redesignating paragraphs
6 (3) and (4) as paragraphs (4) and (5), respectively, and
7 by inserting after paragraph (2) the following new para-
8 graph:

9 “(3) such information and data as may be of
10 value in determining the extent to which minorities
11 and women have participated, and will, under the
12 rules and policies of the Commission, have opportu-
13 nities to participate, as employees and owners of
14 telecommunications facilities;”.

15 **SEC. 12. ADDITIONAL PROVISIONS.**

16 Section 309 of the Communications Act of 1934 is
17 further amended by adding at the end thereof the follow-
18 ing new subsection:

19 “(j)(1) Consistent with the objective of promoting di-
20 versity of ownership of the media of mass communications,
21 the Commission shall include, in any criteria used to limit
22 number, eligibility, or the community (of license) of appli-
23 cations for new licenses for media of mass communications
24 (as that term is used in subsection (i) of the Act), provi-

1 sions that will increase the diversity of the ownership
2 among the new licenses granted.

3 “(2) When specifying application acceptance require-
4 ments for AM clear-channel stations, the Commission
5 shall accept all technically qualified applications which are
6 owned or controlled by members of a minority or by
7 women.

8 “(3) As used in paragraph (2) of this subsection, the
9 term ‘AM clear-channel stations’ means new unlimited-
10 time stations, nighttime operation by an authorized day-
11 time station, or a major change in facilities resulting in
12 operation on an AM channel (A) on which a dominant sta-
13 tion or stations render service over a wide area and (B)
14 which is cleared of objectionable interference within its
15 primary service area and over all or a substantial portion
16 of its secondary service areas.”.

○

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